IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24643 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION LTD. - Petitioner(s)

Versus

SHASHIKANT MULAGIBHAI BARIYA S.T.KARMACHARI - Respondent(s)

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Appearance :

MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR PRABHAKAR UPADYAY for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mrs.Falguni D.

Patel, appearing on behalf of petitioner and learned Advocate, Mr.Prabhakar Upadhyay, appearing on behalf of respondent.

2. In the present petition, the petitioner has challenged the award passed by Industrial Tribunal, Bhavnagar in Reference (IT) No.61 of 1997 dated 28.3.2005, whereby, the Industrial Tribunal has set aside the punishment order dated 25.3.1997 and direction was given to Corporation to pay difference of salary with consequential benefits to the respondent workman.

3. Initially, this Court has issued Rule and ad-interim relief in terms of Para.9(C) was granted. Today, with the consent of both the learned Advocates, matter is taken up for final hearing.

4. Learned Advocate, Mrs.Falguni Patel, submitted that Industrial Tribunal has committed gross error in setting aside the punishment order. She submitted that reporter obtained

certain statements in respect to the accident which have been relied by the competent authority being an hear-say evidence and on that basis, punishment has been rightly imposed by the competent authority. Therefore, Industrial Tribunal has committed an error in coming to conclusion that such statements should not have to be considered as a legal evidence against the workman without giving an opportunity of cross-examination of such person.

5. Learned Advocate, Mr.Prabhakar Upadhyay, submitted that there was an incident of theft in night between 9.10.1996 and 10.10.1996 at Division Workshop. The respondent workman was working as a watchman. In all, three watchmen were performing the duties in shift for the same place. He submitted that due to this incident, all the three watchmen received the charge sheet from the Corporation. Similar nature of inquiry was conducted against each workman by the Corporation and same punishment was imposed by

same day order against three watchmen. He also submitted that in respect to other watchman, Tribunal has set aside the punishment order in respect to Reference No.73 of 1997 the workman Krushnadevsinh R. Gohil dated 31.3.2005, against which SCA No.19990 of 2005 filed by Corporation which has been dismissed by this Court on 3.10.2005 (Coram : Akil Kureshi,J.). Learned Advocate, Mr.Upadhyay, submitted that facts of this case as well as facts of case of other watchman are similar. He submitted that watchman has to perform the work at particular point which was entrusted to him. He should not have to left the point where he was posted. There was no theft on the point on which this workman was working. Therefore, he submitted that charge levelled against the workman is not found to be proved as no person was examined in departmental inquiry. He also submitted that statements which were obtained by reporter in absence of workman are relied by competent authority without offering such person for cross-examination to the workman

and, therefore, finding given by competent authority is baseless and perverse.

6. I have considered the submissions made by learned Advocates appearing for the respective parties. I have perused the award passed by Industrial Tribunal, Bhavnagar. Considering the fact that certain statements were obtained by reporter in absence of workmen which have been relied by competent authority without offering them any cross-examination that itself is sufficient to vitiate the finding given by competent authority. The point on which the work was entrusted to workman, another watchman has specifically admitted that the seal and lock were found OK. Therefore, the allegations which have been made by the Corporation against the present respondent workman is not proved by leading proper evidence in inquiry and finding given by the competent authority is not based upon any legal evidence because such persons were not examined in departmental inquiry. Therefore,

according to my opinion, the Tribunal has rightly set aside the punishment order and Tribunal has not committed any error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India.

7. I have considered the decision of this Court in case of other watchman in SCA No.19990 of 2005 dated 3.10.2005, wherein, identical case has been examined by this Court and the petition of the Corporation is rejected. Therefore, there is no substance in the present petition. Accordingly, present petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

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